

## **Senate Bill No. 1993**

### **CHAPTER 967**

An act to amend Sections 10086, 10089.5, 10089.6, 10089.8, 10089.10, 10089.11, 10089.13, 10089.20, 10089.23, 10089.25, 10089.26, 10089.34, and 10089.50 of, to amend and renumber Sections 10089.7 and 10089.15 of, to add Sections 10089.17, 10089.21, 10089.22, 10089.52, and 10089.53 to, the Insurance Code, relating to earthquake insurance, making an appropriation therefor and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1996. Filed  
with Secretary of State September 27, 1996.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 1993, Calderon. Earthquake insurance: California Earthquake Authority.

(1) Under existing law, a policy of residential property insurance may not be issued or delivered or, under certain circumstances, initially renewed by any insurer unless the named insured is offered coverage for loss or damage caused by an earthquake, as specified. If an offer of earthquake coverage is accepted, the coverage must be continued at the applicable rates and conditions for the policy term, if the residential property insurance policy is not terminated by the named insured or the insurer. At any renewal, an insurer may modify the terms and conditions of an existing policy to provide only the minimum coverage required by law as a result of the enactment of Chapter 939 of the Statutes of 1995, as specified, but must disclose the modification to the insured. This bill would require a specified disclosure to be provided to an insured if earthquake coverage is provided by a policy issued by the California Earthquake Authority.

(2) Existing law creates the California Earthquake Authority, which is authorized to become operational and issue policies of basic residential earthquake insurance, as defined, under certain conditions. These conditions include a determination by the Internal Revenue Service that the authority is exempt from federal income tax, a requirement for certain commitments from insurers and reinsurers, and enactment of a subsequent statute that expressly authorizes the authority to issue policies of earthquake insurance.

This bill would authorize the authority to become operational and issue policies of basic residential earthquake insurance as soon as the Insurance Commissioner certifies that the first 2 conditions in paragraph (2) above have been met.

This bill would also:

(A) Change the definition of “available capital” relative to the authority, and the definition of basic residential earthquake insurance, as specified.

(B) Limit investments of the authority to certain securities, as specified, and limit operating expenses of the authority.

(C) Provide that the duties and liabilities of the authority to its insureds shall be the same as those an insurer owes its insureds under common law and statutes.

(D) Specify that the authority is subject to the Political Reform Act of 1974.

(E) Declare that the authority is a public instrumentality of the state, exercising an essential state function.

(F) Prohibit the authority from becoming a debtor under the United States bankruptcy laws and provide that claims against the authority are not to be governed under existing provisions of the Government Code.

(G) Continuously appropriate funds in the California Earthquake Authority Fund for the purposes of the authority, thereby making an appropriation.

(H) Delete existing provisions that would have provided for the reduction and eventual elimination of assessments by the authority of participating insurers, and instead provide for the reallocation of the assessments, and the reduction of the aggregate assessment to zero dollars in specified circumstances after a specified period of time.

(I) Provide for the authority to issue loss assessment policies for individual condominium units, as specified.

(J) Require an insurer that withdraws from the authority under certain circumstances to impose a premium surcharge on earthquake policies to be used by the authority to repay debt.

(K) Provide that if legislation is enacted that causes the authority to cease operations while debt of the authority is outstanding, participating insurers would be required to impose a premium surcharge on earthquake policies to be used by the authority to repay debt.

Because the bill would provide for premium surcharges on earthquake policies that were not issued by the authority, the bill would impose a tax.

Since the bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, it thus would require the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature for passage.

The bill would also enact other related provisions.

(3) The bill would also provide for a loan of \$1,300,000 to the California Earthquake Authority from the California Residential Earthquake Recovery Fund, to be repaid with interest, as specified.

(4) The bill would become operative only if AB 2086 is also enacted.

(5) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares as follows:

The California Earthquake Authority, created by Chapter 944 of the Statutes of 1995, shall become operational and may issue policies of basic residential earthquake insurance as soon as the Insurance Commissioner has certified that all of the following conditions have been met:

(a) The Internal Revenue Service has determined that the authority is exempt from federal income taxation.

(b) Insurers whose cumulative residential market share is more than 70 percent of the total residential property insurance market in California, exclusive of insurers who have withdrawn from the residential property insurance market as of January 1, 1995, have filed letters of intent, with binding contractual obligation, to participate in the authority. These letters of intent include acknowledgment of the initial operating capital and potential loss assessment requirements.

(c) The authority has obtained appropriate risk transferability in the form of firm reinsurance commitments in an aggregate amount of not less than 200 percent of the total capital contributions committed by participating insurers.

SEC. 2. Section 10086 of the Insurance Code is amended to read:

10086. (a) If an offer of earthquake coverage is accepted, the coverage shall be continued at the applicable rates and conditions for the policy term, provided the policy of residential property insurance is not terminated by the named insured or insurer.

(1) At any renewal, an insurer may modify the terms and conditions of an existing policy, rider, or endorsement providing coverage against loss or damage caused by the peril of earthquake if the modified terms and conditions provide the minimum coverages required by Section 10089.

(2) An insurer that modifies the terms and conditions of an existing policy, rider, or endorsement shall provide the insured with the renewal notice in a stand-alone disclosure document stating the changes in the terms and conditions of the insured's existing policy, rider, or endorsement. Proof of mailing of the disclosure document by first-class mail to a named insured at the mailing address shown on the policy or application creates a conclusive presumption that the disclosure document was provided. The disclosure shall include the

following statement in 14-point boldface type:

THE COVERAGE IN THE POLICY WE ARE OFFERING YOU WITH THIS RENEWAL HAS BEEN REDUCED, AND SUBSTANTIALLY DIFFERS FROM THE COVERAGES PROVIDED BY YOUR HOMEOWNERS' POLICY. INSURANCE COMPANIES ARE ALLOWED TO RENEW EARTHQUAKE INSURANCE POLICIES WITH COVERAGE THAT IS REDUCED FROM THE COVERAGE YOU PREVIOUSLY PURCHASED. YOU MAY REQUEST A SAMPLE COPY OF THIS NEW POLICY TO REVIEW PRIOR TO MAKING A DECISION TO ACCEPT THIS RENEWAL, AND WE WILL MAIL OR DELIVER IT TO YOU WITHIN 14 DAYS OF YOUR REQUEST. A REQUEST FOR THE SAMPLE COPY SHALL NOT CHANGE OR EXTEND THE POLICY EXPIRATION DATE SPECIFIED IN THE RENEWAL NOTICE. A SUMMARY OF THE CHANGES IS INCLUDED WITH THIS NOTICE.

The commissioner shall approve the form of the summary at the time he or she approves the policy. The summary shall include the information contained in subdivision (a) of Section 10083, and may be included with the renewal notice in standard type.

The commissioner may approve substantially similar disclosure forms if necessary to accurately disclose relevant information to the policyholder. The commissioner may also approve disclosure forms substantially similar to the disclosure statement required by Section 10083 if necessary to accurately disclose relevant information to the policyholder.

(3) If the earthquake coverage is provided by a policy issued by the California Earthquake Authority, the following disclosure shall be provided in 14-point boldface type:

CALIFORNIA EARTHQUAKE AUTHORITY POLICY  
DISCLOSURE

THIS POLICY IS BEING PURCHASED FROM THE CALIFORNIA EARTHQUAKE AUTHORITY ("CEA"). THE COVERAGE IN THIS CEA POLICY SUBSTANTIALLY DIFFERS FROM THE COVERAGES PROVIDED IN YOUR HOMEOWNER'S POLICY. THE CEA IS NOT PART OF OR ASSOCIATED WITH YOUR HOMEOWNER'S INSURANCE COMPANY. IF LOSSES AS A RESULT OF AN EARTHQUAKE OR A SERIES OF EARTHQUAKES EXCEED THE AVAILABLE RESOURCES OF THE CEA, THIS POLICY IS NOT COVERED BY THE CALIFORNIA INSURANCE GUARANTY ASSOCIATION. THEREFORE, THE CALIFORNIA INSURANCE GUARANTY



ASSOCIATION WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE CEA BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED. IN ADDITION, YOUR CEA POLICY MAY BE SUBJECT TO FUTURE SURCHARGES OF THE POLICY PREMIUM IN CERTAIN CASES WHERE AN EARTHQUAKE OR SERIES OF EARTHQUAKES HAS EXCEEDED AVAILABLE RESOURCES TO PAY CLAIMS. IN THAT CASE, THIS MEANS THAT IN ADDITION TO THE ANNUAL PREMIUM, YOU MAY BE CHARGED UP TO AN ADDITIONAL 20% OF THE PREMIUM.

(b) If the offer is not accepted, the insurer or any affiliated insurer shall be required on an every other year basis to offer earthquake coverage in connection with any continuation, renewal, or reinstatement of the policy following any lapse thereof, or with respect to any other policy that extends, changes, supersedes, or replaces the policy of residential property insurance.

(c) Nothing in this section shall preclude the named insured from terminating the earthquake coverage at any time.

SEC. 3. Section 10089.5 of the Insurance Code is amended to read:

10089.5. As used in this chapter:

(a) “Authority” means the California Earthquake Authority.

(b) “Available capital” means the sum of all moneys and invested assets actually held in the California Earthquake Authority Fund, except as otherwise allocated to pay specific losses and loss adjustment expenses under policies of basic residential earthquake insurance. “Available capital” includes all interest or other income from the investment of money held in the California Earthquake Authority Fund. “Available capital” does not include the proceeds of contracts of reinsurance procured by or in the name of the authority pursuant to subdivision (a) of Section 10089.10, or any funds realized on account of any transaction pursuant to capital market contracts authorized by subdivision (b) of Section 10089.10.

(c) “Basic residential earthquake insurance” means that policy of residential earthquake insurance described in Section 10089 except as follow:

(1) (A) If one year after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars (\$700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than two thousand five hundred dollars (\$2,500) in coverage for additional living expenses.

(B) If the authority met the available capital requirements of subparagraph (A) and two years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars (\$700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable

deductible, not less than three thousand dollars (\$3,000) in coverage for additional living expenses.

(2) (A) If the authority did not meet the available capital requirement of subparagraph (A) of paragraph (1) but, two years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars (\$700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than two thousand five hundred dollars (\$2,500) in coverage for additional living expenses.

(B) If the authority met the available capital requirements in as provided by subparagraph (A) and three years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars (\$700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than three thousand dollars (\$3,000) in coverage for additional living expenses.

(d) “Board” means the governing board of the authority.

(e) “Bonds” means bonds, notes, commercial paper, variable rate and variable maturity securities, and any other evidence of indebtedness.

(f) “Capital market contract” means an agreement between the authority and a purchaser pursuant to which the purchaser agrees to purchase bonds of the authority.

(g) “Nonparticipating insurer” means an insurer that elects not to transfer or place any residential earthquake policies in the authority.

(h) “Panel” means the advisory panel of the authority.

(i) “Participating insurer” means an insurer that has elected to join the authority.

(j) “Policy of residential property insurance” means those policies described in Section 10087.

(k) “Private capital market” means one or more purchasers of bonds of the authority pursuant to a capital market contract.

(l) “Qualifying residential property” includes all those residential dwellings set forth in Section 10087.

(m) “Residential earthquake insurance market share” means an individual insurer’s total direct premium received for (1) residential earthquake policies and endorsements written or renewed by the insurer in California and (2) residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(n) “Residential property insurance market share” means an individual insurer’s total gross premiums received for residential property insurance policies written or renewed by the insurer,

divided by the total gross premiums received by all admitted insurers for residential property insurance in California.

(o) “Revenue” means all income and receipts of the authority, including, but not limited to, income and receipts derived from premiums, bond purchase agreements, capital contributions by insurers, assessments levied on insurers, surcharges applied to authority earthquake policyholders, and all interest or other income from investment of money in any fund or account of the authority established for the payment of principal or interest, or premiums on bonds, including reserve funds.

SEC. 4. Section 10089.6 of the Insurance Code is amended to read:

10089.6. (a) There is hereby created the California Earthquake Authority, which shall be administered under the authority of the commissioner and have the powers conferred by this chapter. The authority shall be authorized to transact insurance in this state as necessary to sell policies of basic residential earthquake insurance in the manner set forth in Sections 10089.26, 10089.27, and 10089.28. The authority shall have no authority to transact any other type of insurance business.

(b) (1) The investments of the authority shall be limited to those securities eligible under Section 16430 of the Government Code.

(2) The rights, obligations, and duties owed by the authority to its insureds, beneficiaries of insureds, and applicants for insurance shall be the same as the rights, obligations, and duties owed by insurers to its insureds, beneficiaries of insureds and applicants for insurance under common law, regulations, and statutes. The authority shall be liable to its insureds, beneficiaries of insureds, and applicants for insurance as an insurer is liable to its insureds, beneficiaries of insureds, and applicants for insurance under common law, regulations, and statutes.

(c) The operating expenses of the authority shall be capped at not more than 3 percent of the premium income received by the authority. The funds shall be available to pay any advocacy fees awarded in a proceeding under subdivision (c) of Section 10089.11.

SEC. 5. Section 10089.7 of the Insurance Code, as added by Section 1 of Chapter 848 of the Statutes of 1995, is amended and renumbered to read:

10089.70. The department shall establish a pilot program for the mediation of the disputes between insured complainants and insurers arising out of the Northridge earthquake of 1994 or any subsequent earthquake. The pilot program shall apply only to personal lines of insurance related to residential coverage. The goal of the pilot program shall be to favorably resolve a statistically significant number of disputes sent to mediation under the program. This chapter does not apply to any dispute that turns on a question of major insurance coverage or a purely legal interpretation, or disputes involving the actions of an agent or broker in which the



insurer is not alleged to have been responsible for the conduct, or any complaint the commissioner finds to be frivolous, or any dispute in which a party is alleged to have committed fraud.

SEC. 6. Section 10089.8 of the Insurance Code is amended to read:

10089.8. (a) The authority shall operate pursuant to a written plan of operations. The panel shall submit a plan to the board for approval. If it approves the plan, the board shall submit the plan to the commissioner for his or her approval. On receiving the commissioner's approval, the board shall formally adopt the plan and submit the plan to the Legislature. Upon commencement of the issuance of insurance policies by the authority, any subsequent amendments to the plan of operation shall be approved by the board and the commissioner.

(b) If at any time the commissioner disapproves the submitted plan or any plan amendments adopted by the board, the board may within 15 days submit changes in the plan to the commissioner. If the commissioner disapproves the plan or the changes in the plan, or if the board fails to submit a plan or to make and submit the requested changes, the commissioner may require the board to adopt that plan or those changes directed by the commissioner.

(c) The plan of operations shall establish in detail the policies and procedures of the authority, including, but not limited to, financial operations of the authority, claims procedures, methods of premium collection, procedures consistent with constitutional, statutory, and common law requirements for resolving grievances of applicants or policyholders who are dissatisfied with application handling or adverse claims decisions, whether by the authority or by a servicing insurer, assessment procedures, a plan for resolution of assessment disputes between the authority and insureds, grievances between the authority and participating carriers, servicing carrier fees and expenses, reasonable underwriting standards, and producer compensation.

SEC. 7. Section 10089.10 of the Insurance Code is amended to read:

10089.10. To expand the capacity of the authority and achieve maximum capacity for writing earthquake coverage, the authority shall do both of the following acts, on prior approval of the commissioner:

(a) The authority shall purchase contracts of reinsurance at rates and on terms the board considers reasonable and appropriate.

(b) The authority, through the Treasurer, shall enter capital market contracts on terms as the board and Treasurer may consider reasonable and appropriate. The Treasurer shall not withhold approval except for good cause related to the purposes of the authority. Such terms may include indemnification and contribution provisions protecting parties to the capital market contracts of the authority against material misstatements in or material omissions





from the authority's official statements and other authority documents referred to in the capital markets contracts.

(c) The total annual expenditure for reinsurance contracts and capital market contracts pursuant to this section shall not exceed a reasonable and appropriate percentage of the annual earthquake insurance premiums collected by the authority.

SEC. 8. Section 10089.11 of the Insurance Code is amended to read:

10089.11. (a) The commissioner shall adopt regulations to implement the provisions of this chapter within 60 days of its effective date. The regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(b) Regulations shall specify procedures for ratemaking and forms approval, define the type and quality of investments the authority is authorized to make, define coverage types and limits, set forth producer compensation rates, and specify the procedures to be followed by the authority following any earthquake event where the magnitude of earthquake losses make it likely that prorated benefits may be paid. The regulations shall be consistent with the requirements of Proposition 103.

(c) The rights provided by Section 1861.10 shall apply to proceedings under this chapter relating to establishing rates and regulations for earthquake insurance sold by the authority.

(d) All materials and documents prepared or used by the authority to determine its rates other than proprietary materials and documents owned or licensed by third parties shall be considered public documents, and copies of the public documents shall be made available to the public for inspection at no charge. Members of the public may purchase public ratemaking related documents from the authority at actual cost.

SEC. 9. Section 10089.13 of the Insurance Code is amended to read:

10089.13. (a) One year following its commencement of operations, and annually thereafter by each January 1, the authority shall report to the Legislature and the commissioner on program operations in a format prescribed by the commissioner. The report shall include, but shall not be limited to, the financial condition of the authority, a description of all rates and rating plans approved for use in the authority, an evaluation of the functioning of the authority in light of its stated purpose of making residential property insurance and residential earthquake insurance more available. The report shall also include an analysis of the growth by market share of

residential property insurance of participating insurers compared to nonparticipating insurers, any adverse consequences on the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of the residential property insurance market share between participating insurers and nonparticipating insurers, any adverse consequences of the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of homeowners' insurance market share between participating insurers and nonparticipating insurers, and an analysis of any recommended program changes to permit the authority to better fulfill its stated purpose. In making this determination the board shall be mindful of the competitive nature of the market and how any decision can negatively impact insurers who are currently competing in the marketplace.

(b) The annual report shall include full information describing the following matters relating to the authority's condition and affairs.

(1) The property or assets held by the authority, including the amount of cash on hand and deposited in banks to its credit, the amount of cash in the hands of servicing insurance companies, the amount of any stocks or bonds owned by the authority, specifying the amount, number of shares, and the par and market value of each kind of stock or bond, and all other assets, specifying each.

(2) The liabilities of the authority, including the amount of losses due and unpaid, the amount of claims for losses resisted by the authority and the amount of losses in the process of adjustment or in suspense, including all reported and supposed losses, the amount of revenue bonds or other debt financing issues under Section 10089.29 or Section 10089.50, and all other liabilities.

(3) Income of the authority during the preceding year, specifying premiums received, interest money received, and income from all other sources, specifying the source.

(4) Expenditures of the authority during the preceding year, specifying the amount of losses paid, the amount of expenses paid by category, and the amount of all other payments and expenditures.

(5) The costs and scope of all reinsurance and capital market contracts entered into by the authority under Section 10089.10.

(c) As part of the annual report, the authority shall make a separate, summary report on the financial capacity of the authority to pay claims made against the authority. Copies of this report shall also be made available to the public. The report shall include, but shall not be limited to, the following information, valued as of 30 days prior to the date of the report.

(1) The available capital of the authority.

(2) The liabilities of the authority.

(3) The amount of all assessments previously made and the amount of assessments that may be made in the future under Section 10089.23.



(4) The amount of the reinsurance under contract and actually available to the authority.

(5) The amount of all revenue bonds or other debt financing previously issued or contracted for and the amount of all revenue bonds or other debt financing that may be issued or contracted for in the future under Section 10089.29.

(6) The amount of surcharges previously assessed against policyholders and the amount of surcharges that are currently outstanding against policyholders under Section 10089.29.

(7) The amount of capital committed and actually available by contract from private capital markets that is available to pay claims against the authority.

(8) The amount of all assessments previously made and the amount of all assessments that may be made in the future under Section 10089.30.

(d) In verification of the matters set forth in the annual report provided for in subdivision (a), the Department of Finance shall approve independent qualified auditors selected by the commissioner to examine the books and accounts relating to all matters concerning the financial and program operations of the authority. The commissioner shall file a certified report of the examination with the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairpersons of the Senate and Assembly Insurance Committees, and the Chairperson of the Senate Committee on Judiciary within 10 days of its receipt. Copies of this report shall also be made available to the public. The expense of examining the books and accounts of the authority shall be paid out of the operating funds of the authority.

(e) The authority shall, within 120 days following a seismic event that results in the payment of claims by the authority, and within one year of a major seismic event that results in the payment of claims by the authority, submit to the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairpersons of the Senate and Assembly Insurance Committees, and the Chairperson of the Senate Committee on Judiciary, and the commissioner a concise written report of program operations related to that seismic event. The reports shall include, but not be limited to, progress on payment of claims, claims payments made and anticipated, and the functioning of the authority in response to the seismic event. Copies of this report shall also be made available to the public.

SEC. 10. Section 10089.15 of the Insurance Code, as added by Section 7 of Chapter 1166 of the Statutes of 1990, is amended and renumbered to read:

10089.1. To the extent that the coverage is not already provided in the minimum offer of coverage, every insurer shall offer the following optional coverage as part of the offer of coverage as required by Section 10081 only after the insured has completed and

the insurer has verified retrofitting of the residential dwelling as described in subdivision (a) of Section 10089.2:

Coverage in the amount of ten thousand dollars (\$10,000) for the purpose of reconstruction costs required to bring the residential dwelling on the residential property up to required current local residential dwelling building code standards as required by the local entity as part of the approval of the reconstruction permit process after an earthquake.

SEC. 11. Section 10089.17 is added to the Insurance Code, to read:

10089.17. Notwithstanding subdivision (h) of Section 10089.7, the authority shall be subject to the provisions of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

SEC. 12. Section 10089.20 of the Insurance Code is amended to read:

10089.20. The authority shall renew any policy of basic residential earthquake insurance, provided the authority receives payment of the applicable renewal premium on or before the expiration date stated in the policy. The authority shall nonrenew, rescind, or cancel a policy if the property is no longer covered by an underlying policy of residential property insurance. The policy issued by the authority shall not provide coverage in the event that there is no underlying policy of property insurance at the time of loss. In that case, any unearned premiums shall be returned to the policyholder on a pro rata basis.

SEC. 13. Section 10089.21 is added to the Insurance Code, to read:

10089.21. The authority is a public instrumentality of the State of California and the exercise of its powers is an essential state governmental function. No provision of law, including, but not limited to, subdivision (h) of Section 10089.7 and subdivision (e) of Section 10089.22, shall be construed to affect the status of the authority as a public instrumentality of the State of California. Notwithstanding any other provision of law, the authority is not and shall never be authorized to become a debtor in a case under the United States Bankruptcy Code (Title 11 of the United States Code) or to make an assignment for the benefit of creditors or to become the subject of any similar case or proceeding, nor is the authority subject to Article 14 (commencing with Section 1010) and Article 14.3 (commencing with Section 1064.1) of Chapter 1 of Part 2 of Division 1. Notwithstanding any other provision of law, the commissioner shall not, directly or indirectly, when exercising the power and authority contained or referred to in or arising from Section 10089.6, paragraph (5) of subdivision (e) of Section 10089.7, Section 10089.12, subdivision (e) of Section 10089.22, subdivision (b) of Section 10089.35, or any other statute, rule, or regulation, impede or in any manner interfere with, but shall affirmatively take all necessary steps to effect, and no person acting under subdivision (c)



of Section 10089.11, or any other provision of law or principle of equity shall be permitted in any way to impede or in any manner interfere with: (a) the full and timely payment of principal, interest, and premiums on revenue bonds of the authority and amounts due those bond insurers and providers of credit support and letters of credit; and (b) any pledge or assignment of revenues as security for those payments or amounts due, and the full and timely application of those pledged or assigned revenues to those payments and amounts due, in each or either case, (a) or (b), as and when due in accordance with and subject to the limitations contained in Section 10089.22 and the terms of the constituent instruments defining the rights of the holders of the bonds and the providers of bond insurance, credit support, and letters of credit.

Division 3.6 (commencing with Section 810) of Title 1 of the Government Code shall not apply to acts of the authority.

SEC. 14. Section 10089.22 is added to the Insurance Code, to read:

10089.22. (a) The authority shall be continued in existence for so long as its bonds are outstanding. Unless and until the authority is terminated pursuant to Section 10089.43, the commissioner and the authority shall execute assignments and contracts and take all necessary steps to assure that all revenue of the authority is paid to a trustee appointed by the Treasurer, which trustee may be the treasurer. The revenue of the authority shall be pledged and assigned to and held in trust by the trustee and invested and disbursed by the trustee, to pay, or to set aside funds to pay, principal, interest, and premiums on bonds and amounts due bond insurers and providers of credit support and letters of credit for those bonds, but only in the manner and in accordance with the terms of the constituent instruments defining the rights of the holders of bonds of the authority and the providers of bond insurance, credit support and letters of credit for those bonds. Amounts held by the trustee from time to time after provisions for those payments may be disbursed free of trust to the California Earthquake Authority Fund. Notwithstanding the foregoing provisions of this section, (1) debt service payments on bonds of the authority secured by or payable from securities described in Section 16430 of the Government Code shall not be secured by a pledge or assignment of revenue of the authority other than revenue of the authority from (A) the proceeds of sale of such bonds, (B) the securities described in Section 16430 of the Government Code, and (C) principal and interest payments on such securities described in Government Code Section 16430, but debt service payments on such bonds of the authority may also be made payable from revenue of the authority in the California Earthquake Authority Fund, and (2) the constituent instruments defining the rights of the holders of bonds of the authority referred to in paragraph (1) shall specify that payment of a portion of the interest on such bonds is contingent upon payment of policyholder



claims for which the bonds are responsible and that the obligation of the authority is to first apply such assigned or pledged revenue to the payment of such policyholder claims instead of paying that contingent interest.

(b) There is hereby created the California Earthquake Authority Fund, which is not a fund in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated without regard to fiscal years for the purposes of this chapter. The fund shall be administered by the commissioner, subject to the direction of the board, to pay all costs arising from this chapter, including, but not limited to, premiums payable by the authority under contracts of reinsurance, claims arising under policies of basic residential earthquake insurance issued by the authority, operating and other expenses of the authority, and to establish reserves. At the discretion of the commissioner, segregated, dedicated accounts within the fund may be established for those payments.

(c) The board may cause moneys in the fund to be invested and reinvested, from time to time, in accordance with paragraph (4) of subdivision (c) of Section 10089.7 and subject to subdivision (b) of Section 10089.6. Moneys in the fund and not so invested may be deposited from time to time in (1) financial institutions authorized by law to receive deposits of public moneys, or (2) with the approval of the Treasurer, the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Division 4 of Title 2 of the Government Code.

(d) A national bank shall be custodian of all securities belonging to the fund, except as otherwise provided in this chapter and except as otherwise provided in the constituent instruments that define the rights of the holders of bonds of the authority and the providers of bond insurance, credit support, and letters of credit for those bonds.

(e) The board may, in cooperation with the Treasurer, authorize the establishment of an account or fund in the State Treasury in the name of the authority, but money deposited with the Treasurer in that account or fund is not state money within the intent of Section 16305.2 of the Government Code, and Sections 16305.3 to 16305.7, inclusive, of the Government Code shall not apply to money drawn or collected by the authority.

SEC. 15. Section 10089.23 of the Insurance Code is amended to read:

10089.23. (a) (1) If at any time following the payment of earthquake losses the authority's available capital is reduced to less than three hundred fifty million dollars (\$350,000,000), or if at any time the authority's available capital is insufficient to pay benefits and continue operations, the authority shall have the power to assess participating insurance companies subject to the maximum limits as set forth in this section and Section 10089.30. The assessment shall be limited to the amount necessary to pay the outstanding or expected

claims of the authority and to return the authority's available capital to three hundred fifty million dollars (\$350,000,000), as determined by the board, subject to approval by the commissioner.

(2) Each participating insurer's assessment shall be determined by multiplying its residential earthquake insurance market share, as of December 31 of the immediately preceding year or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority.

(3) Maximum permissible insurer assessments pursuant to this section and Section 10089.30, maximum permissible earthquake policyholder assessments pursuant to Section 10089.29, and maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 shall be reduced uniformly by multiplication of the maximum assessments and other amounts provided in those sections by the percentage of the total residential property insurance market share participation attained by the authority upon its commencement, as described in Section 10089.15. The total amount of all assessments levied on participating insurance companies by the authority pursuant to this section shall not exceed three billion dollars (\$3,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid amounts equal to its residential earthquake insurance market share multiplied by three billion dollars (\$3,000,000,000) pursuant to this section, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section.

(4) Beginning December 31 of the first year of operations, and each December 31 thereafter, the board shall adjust the maximum permissible insurer assessments pursuant to this section and Section 10089.30, the maximum permissible authority policyholder assessment pursuant to Section 10089.29, and the maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 to reflect the market share of new insurers entering into the authority as authorized by Sections 10089.15 and 10089.16 and participating insurers withdrawing from the authority as authorized by Section 10089.19. The adjustments shall be made in the same manner as authorized by paragraph (3).

(b) In the case of any insurer assessment, the authority shall cause to be sent to each participating insurer a notice of that insurer's assessment, and full payment shall be due within 30 days and shall be overdue after 30 days. Penalties and interest shall be assessed for late payments in the same manner as provided for late payments of the insurer gross premium tax pursuant to Section 12258 of the Revenue

and Taxation Code. The board may waive the penalties and interest for good cause shown. The board shall make every effort to assess insurers only for funds reasonably anticipated to be necessary for claims payments and to return the authority's available capital to three hundred fifty million dollars (\$350,000,000).

(c) On the first December 31 after two years following the date of commencement of authority operations, the aggregate assessment authorized under this section shall be subject to reallocation by an amount equal to the amount of available capital in excess of one billion dollars (\$1,000,000,000). For each dollar accumulated in available capital in excess of one billion dollars (\$1,000,000,000), the board shall reallocate one dollar (\$1) of the aggregate assessment liability of participating insurers under this section to make those funds subject to assessment only in the event that the benefits paid by the authority following an earthquake event exhaust the total of (1) the authority's available capital, (2) the maximum amount of all insurer capital contributions pursuant to Section 10089.15, (3) the maximum amount of insurer assessments pursuant to Section 10089.23 which has not been reallocated, (4) all reinsurance actually available and under contract to the authority, (5) the maximum amount of all authority policyholder assessments pursuant to Section 10809.29, (6) all capital committed and actually available by contract to the authority from private capital markets, and (7) the maximum amount of all insurer assessments pursuant to Section 10089.30. Each December 31 thereafter, the board shall further reallocate the aggregate assessment authorized under this section by an amount equal to the net increase in available capital in excess of the previous level of available capital at which a reallocation in the aggregate assessment was made. Any reallocation pursuant to this subdivision shall not exceed 15 percent of the original aggregate assessment in any year of the operation of the authority. In no event shall any reallocated assessments previously authorized by the board be reinstated.

(d) If the average daily balance of the authority's available capital exceeds four billion dollars (\$4,000,000,000) for any 30-day period after the authority has been operative for 10 or more years, the aggregate assessment authorized by this section, including any reallocated amounts, shall be reduced by the board to zero dollars (\$0), notwithstanding any other provisions of this section.

(e) Notwithstanding the other provisions of this section, the aggregate assessment authorized by this section, including any reallocated amounts, shall be reduced to zero no later than 12 years following the commencement of authority operations.

SEC. 16. Section 10089.25 of the Insurance Code is amended to read:

10089.25. Beginning December 31, 1997, and annually thereafter on the 31st of December, the board shall notify each participating



insurer of the maximum earthquake loss funding assessment level that it may be required to meet.

SEC. 17. Section 10089.26 of the Insurance Code is amended to read:

10089.26. (a) The authority shall issue policies of basic residential earthquake insurance, including earthquake loss assessment policies for individual condominium unit properties, to any owner of a qualifying residential property, as long as the owner has secured a policy of residential property insurance from a participating insurer.

(1) For purposes of this section, earthquake loss assessment coverage shall be issued in a minimum amount of fifty thousand dollars (\$50,000) for individual condominium units valued at more than one hundred thirty-five thousand dollars (\$135,000). Earthquake loss assessment coverage shall be issued in a minimum amount of twenty-five thousand dollars (\$25,000) for individual condominium units of one hundred thirty-five thousand dollars (\$135,000) in value or less. The value of the land shall be excluded when determining the value of the condominium, as it relates to the earthquake loss assessment coverage offered by the authority.

(2) The panel shall submit to the board, and the board shall approve, rates for earthquake loss assessment coverage that reasonably balance the earthquake loss assessment coverages offered and the potential exposure to earthquake loss resulting from a earthquake loss assessment policy as compared to the coverages offered and the potential exposure to earthquake loss resulting from residential property other than individual condominium policies.

It is the intent of the Legislature, to the extent practicable, that rates charged by the authority to condominium loss assessment policyholders and residential property owner policyholders are treated equitably, and that a proportionate share of premiums is paid for potential exposure to loss, to the authority.

(b) Nothing in this section shall prohibit a participating or nonparticipating insurer from offering a condominium earthquake loss assessment policy for different amounts of coverage other than those offered by the authority.

SEC. 18. Section 10089.34 of the Insurance Code is amended to read:

10089.34. (a) (1) The policies issued by the authority shall not be subject to assessment for, nor shall any authority policyholder be eligible for benefits from, the California Insurance Guaranty Association.

(2) Policies of residential earthquake insurance written by participating insurers that supplement, augment, or are in excess of the authority's policy of basic earthquake insurance shall be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(b) (1) Policies of basic residential earthquake insurance written by nonparticipating insurers shall be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(2) Participating insurers of the authority shall have no obligation to pay assessments to the California Insurance Guaranty Association for covered claims obligation arising from policies of basic residential earthquake insurance written by nonparticipating insurers.

SEC. 19. Section 10089.50 of the Insurance Code is amended to read:

10089.50. The Treasurer may from time to time enter into one or more credit facilities permitting the authority to draw an amount up to one billion dollars (\$1,000,000,000) with payment, interest rate, indemnity, compensation, security, default, remedy, and other terms and conditions as determined by the authority. All drawings under these credit facilities shall be available as funding for the authority as provided in Section 10089.29.

SEC. 20. Section 10089.52 is added to the Insurance Code, to read:

10089.52. Nothing in Section 10089.50 or 10089.51 is intended to limit the applicability to the authority of any provision of Section 5450 or subdivision (c) of Section 5922 of the Government Code.

SEC. 21. Section 10089.53 is added to the Insurance Code, to read:

10089.53. (a) Any insurer that withdraws from the authority under Section 10089.19 while bonds or other debt is outstanding shall impose annually a premium surcharge on each policy of residential earthquake insurance written by it equal in percentage amount, calculated as a percentage of the basic residential earthquake insurance premium, to the percentage amount of the surcharge being imposed in that year by the authority pursuant to subdivision (b) of Section 10089.29. That insurer shall remit promptly all those surcharges collected by it to the trustee appointed pursuant to Section 10089.22. The surcharges shall be used solely to repay the bonded indebtedness or other debt issued pursuant to subdivision (a) of Section 10089.29. If the sum of the surcharges remitted to the trustee pursuant to this section plus the amount of the surcharges imposed by the authority pursuant to subdivision (b) of Section 10089.29 would exceed the amount authorized by that provision, then surcharges of the authority shall be reduced by an amount equal to that excess.

(b) Should the Legislature and Governor approve legislation that causes the authority to cease operation while bonds or other debt are outstanding, participating insurers shall impose annually a premium surcharge on each policy of residential earthquake insurance written by them equal in percentage amount, calculated as a percentage of the basic residential earthquake insurance premium, to the percentage amount of the surcharge being imposed in that year by



the authority pursuant to subdivision (b) of Section 10089.29. Those insurers shall remit promptly all these surcharges collected by them to the trustee appointed pursuant to Section 10089.22. The surcharges shall be used solely to repay the bonded indebtedness or other debt issued pursuant to subdivision (a) of Section 10089.29. If the sum of the surcharges remitted to the trustee pursuant to this section plus the amount of the surcharges imposed by the authority pursuant to subdivision (b) of Section 10089.29 would exceed the amount authorized by that provision, then surcharges of the authority shall be reduced by an amount equal to that excess.

SEC. 22. The sum of one million three hundred thousand dollars (\$1,300,000) is hereby loaned to the California Earthquake Authority from the California Residential Earthquake Recovery Fund in order to implement this act. This loan shall be repaid within the first 12 months of operation of the authority with interest due at the legal rate on the outstanding balance.

SEC. 23. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 24. This act shall become operative only if Assembly Bill 2086 is also enacted.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to promote the restoration of affordable and available homeowners' insurance for all Californians, provide protection from the devastating and catastrophic losses caused by earthquakes, and continue California's economic growth, it is necessary that this act take effect immediately.

